

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

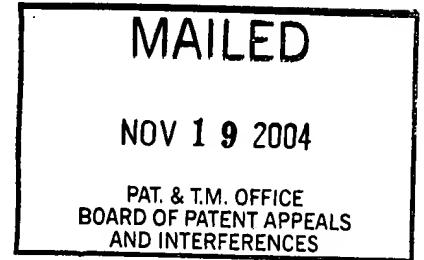
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS APPLE, PAUL NOBLE, JOHN FOOTEN and ANDREW KLEIN

Appeal No. 2003-0938
Application No. 08/736,143

ON BRIEF



Before BARRETT, FLEMING, and DIXON, **Administrative Patent Judges.**

FLEMING, **Administrative Patent Judge.**

VACATUR AND REMAND TO THE EXAMINER

Pursuant to a Joint Motion for Remand at the U.S. Court of Appeals of the Federal Circuit, we vacate our decision and decision on rehearing and remand this application to the Examiner for appropriate action.

Background

On December 16, 2003, this panel affirmed the Examiner's rejection of claims 32, 33, 35, 36 under 35 U.S.C. § 102 and the Examiner's rejection of claims 1 through 31, 34, 37 and 38 under

Appeal No. 2003-0938
Application No. 08/736,143

35 U.S.C. § 103. Appellants filed a request for rehearing on February 17, 2004. The request for rehearing was denied by a decision of this panel on May 6, 2004. On July 1, 2004, Appellants appealed our decision to the U.S. Court of Appeals of the Federal Circuit. On November 1, 2004, Appellants and the Director of the United States Patent and Trademark Office (USPTO), jointly moved to remand this case back to the USPTO to permit further prosecution. The Joint Motion requires that upon remand from the Court of Appeals of the Federal Circuit, the USPTO Board of Patent Appeals and Interferences will vacate its decisions and remand this case to the Examiner for further appropriate action. The Court of Appeals of the Federal Circuit remanded this case back to the USPTO and terminated court processing on November 1, 2004.

VACATUR

Pursuant to the Joint Motion for Remand, we vacate our decision dated December 16, 2003, and decision on request for rehearing dated May 6, 2004, and we remand this case to the Examiner for further appropriate action. Pursuant to the Joint Motion, the USPTO agrees to conduct the further USPTO proceedings in an expedited manner. **See USPTO Manual of Patent Examining Procedure** § 708.01 (listing the bases that a case should be

Appeal No. 2003-0938
Application No. 08/736,143

handled in an expedited manner). Specifically, the Joint Motion calls for the Solicitor's Office to monitor this case upon our remand and the Examiner will attempt, within three months from our remand, to issue his or her office action on the case.

This application is accordingly remanded to the Examiner for further action consistent with the foregoing.

VACATUR and REMAND

Lee E. Barrett

LEE E. BARRETT
Administrative Patent Judge

Michael R. Fleming
MICHAEL R. FLEMING

Administrative Patent Judge

Joseph L. ...

JOSEPH L. DIXON
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

MRF/lbg

Appeal No. 2003-0938
Application No. 08/736,143

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110